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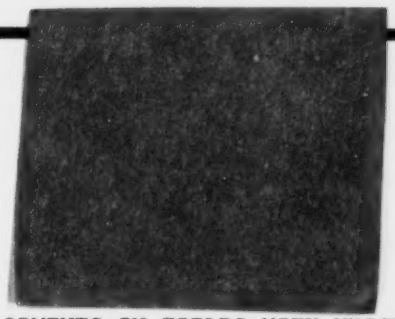

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Working paper on the promotion and protection of human rights by the exercise of democracy and the establishment of a democratic society, submitted by Mr. Osman El-Hajjé in accordance with Sub-Commission decision 1996/117

Introduction

1. At its forty-seventh session, in its decision 1995/116 of 24 August 1995, the Sub-Commission, having taken into consideration the oral statement on the subject made by Mr. Osman El-Hajjé, decided to request Mr. El-Hajjé to prepare a working paper on democracy and the establishment of a democratic society, to be submitted to it at its forty-eighth session. At that session, the Sub-Commission had before it the working paper (E/CN.4/Sub.2/1996/7) and subsequently adopted decision 1996/117, entitled "Democratic society", in which it requested Mr. El-Hajjé to prepare, without financial implications, an expanded working paper on ways and means of promoting democracy, how democracy can ensure economic, social, cultural and political rights and how to overcome obstacles to democracy, and to present the expanded working paper to the Sub-Commission at its forty-ninth session. The present document is submitted pursuant to that request.

I. PRELIMINARY REMARKS

A. Sources used in this working paper

2. In drafting this expanded working paper, the author has made reference not only to the numerous writings of jurists, political scientists and sociologists cited in the bibliography, but also to the reports and resolutions of United Nations agencies and international conferences and congresses on the consolidation of democracy, and in particular new or restored democracies. A list of these documents, reports and resolutions is contained in the annex to this document.

B. Proposed method of work for the study

3. As the author stated in the previous Sub-Commission document (E/CN.4/Sub.2/1996/7, para. 3), he hopes that this working paper can be considered in plenary meeting during the forty-ninth session.

4. In his view, the study - if carried out - should focus on an analysis of the provisions of the international human rights instruments so as to keep a proper distance between the research and political problems, and to ensure that the research remains within a human rights perspective.

5. Accordingly, in undertaking the research, priority will be given to the rights set forth in the two international human rights Covenants; it will also be necessary to put forward proposals for involving the individual in the development, implementation and monitoring of decisions affecting the observance and promotion of his or her fundamental rights and freedoms.

6. To this end, the proposed study will analyse those historical and cultural factors that may affect the acceptance, entrenchment and furtherance of democracy through the exercise of human rights.

C. Aim of the proposed study

7. In the author's view, the proposed study should serve not only as a teaching document, but also as a specialized technical assistance and reference manual for establishing, preserving and furthering democracy. This is a huge task whose scale, impact and implications mean that it cannot be performed without active support from the Sub-Commission and the Commission on Human Rights, as well as from the international community.

8. That having been said, the study will endeavour to develop a pattern for global action, incorporating all the elements necessary for the functioning of a democratic society and for safeguarding human rights. In such a society,

the individual plays a central role as a citizen by exercising the rights set forth in the two Covenants and also through the furtherance and consolidation of those same rights.

9. To achieve this, it is essential to seek out and determine the minimum economic, social and cultural conditions that enable citizens to perform their role and to exercise the rights set forth in the two Covenants, in order to take account of the contingencies of everyday life and the environment in which these rights are exercised.

10. To this end, the study will take into consideration the degree of complexity attained by society, together with the unified, decentralized or federal nature of the State, in order to assess the difficulties, and also the advantages, that restrict or encourage the exercise of human rights and the establishment and furtherance of democracy.

D. General structure of this document

11. On the basis of the guidelines set out in Sub-Commission decision 1996/117, the following issues are successively addressed.

(a) The obstacles to democracy and the means of overcoming them;

(b) Means of promoting a democratic society;

(c) How democracy can ensure the realization of economic, social and cultural rights.

12. Before addressing these major topics, an effort must be made to define a democratic society and to determine its characteristic features. This will make it possible to identify the obstacles to the establishment and functioning of democracy, and to identify means of overcoming these obstacles while safeguarding human rights.

13. Thus, a democratic society may be defined as an entity composed of individual men and women who are equal citizens before the law, regardless of their race, colour, language or religion. These individuals participate directly or indirectly, by exercising their rights in accordance with predetermined rules which respect the principles of equality and equity, in the enactment of legislation and the supervision of governance. Relations between citizens and between citizens and the State are indeed governed by law, but also by ethical and moral principles. Conflicts arising within such societies are examined and resolved, depending on their importance, either by specialized independent and impartial bodies or by a decision taken by the

citizens as a whole or by a previously determined majority of their representatives, which varies according to the importance of the question at issue, while respecting the rights and interests of minorities or the minority. Within such a society, the media have complete freedom to ensure transparency by publishing information and the attendant facts and by asking whatever questions are deemed necessary to enlighten public opinion, to stimulate it and to help it seek solutions to society's medium or long-term social, economic and political problems. Citizens may freely associate, either spontaneously or in an organized manner, depending on their concerns, interests and affinities, in political parties, groups, trade unions, clubs or other forms of association for periods of varying length. The groups not only constitute a force for making proposals and taking initiatives - or a haven of peace, but also form an alternative power source capable of defending individuals and citizens, protecting them, helping them to develop by integrating them into their environment, representing them and, if necessary, speaking on their behalf in areas of concern to them. This accounts for the importance of public freedoms with their concomitant potential for dialogue, communication, transmission and action to influence the overall progress of society.

14. It follows from the foregoing that the issue of who governs and how he is chosen is of secondary importance since government activity as a whole is controlled by laws and regulations designed to restrict as far as possible any attempts to divert authority for personal ends and possible abuse of office, in order to direct action towards the attainment of the public good and the general welfare. Consequently, it is the individual concerned, the citizen, who is fully entitled, directly or indirectly, to choose those who exercise the governmental, representative or legislative function, and who renews or withdraws his trust - or rather his delegation of authority - at predetermined intervals and in accordance with rules that protect his freedom of choice and punish any attempt to vitiate or divert it. This very freedom is the foundation, but also the purpose, of any democratic society.

II. THE OBSTACLES TO DEMOCRACY AND THE MEANS OF OVERCOMING THEM

15. Democracy presupposes that a society is shaped by laws and regulations, formulated by its citizens or their representatives, whose purpose is to respond to a particular situation. This means that society must be imbued

with a legal culture, remote from any metaphysical belief or supernatural phenomenon, so that citizens, who are supposedly free, are not induced to adopt a pattern of behaviour, divorced from contemporary reality, which would lead them to passively resist or actively oppose, for no apparent reason, any change in their economic, social, cultural or political environment, thus preventing any progress or even any contact with the outside or any communication capable of introducing a different world view.

16. A legal culture means that individuals possess attributes, that they enjoy rights and prerogatives, and that in exchange they assume duties and functions which give rise to responsibilities and penalties. Consequently, in a democratic society no one can be without attributes. In other words, the absence of a legal culture means that individuals are subject to a balance of power, which disregards equality before the law, thus favouring whoever possesses the instruments, means and objects of power and is thereby able to intimidate, vanquish and dominate others, which constitutes a negation of democracy.

17. How then can one ensure that individuals acquire this "legal culture"? The principle of equality before the law must be publicized and explained to all citizens from early childhood, and any discriminatory treatment must be justified on grounds that are specific, recognizable and accepted by all. On the basis of this rule of equality, a legal culture can teach rights, duties and responsibilities, thus creating solidarity among the members of the same society.

18. Similarly, the isolation and marginalization of the individual, and consequently the weakening of his position in his environment, are incompatible with a democratic society. Hence the need to integrate citizens in order to avert the emergence of groups based solely on solidarity among the family, clan or tribe, whose outcome will be the splitting or feudalization of public administration and the disintegration of the State.

19. To overcome this obstacle, democratic society develops dialogue and communication among its members and between them and the outside world. This means that institutions for dialogue will have to be established and those that exist preserved and reformed in the light of the needs expressed and objectives pursued. This task requires an overall climate of confidence, which becomes an end in itself. Hence the need to develop measures and take the initiatives to ensure that the dialogue is as effective as desired.

20. In addition, the concentration of power, of whatever kind (political, economic, financial, scientific, or even the power of the media) thwarts individual freedom and fulfilment, because it does not brook dialogue and communication. To overcome this obstacle, democracy calls for the sharing of all powers among citizens, each of whom obtains the share corresponding to his efforts, his abilities and the greater or lesser role he plays in serving society as a whole. Thus, equality is achieved in concrete terms through distributive justice which takes account only of effort and the general interest.

21. However, preventing concentration requires the various branches of power to be independent of one another, while preserving cooperation among them. Democracy is based on a constitutional limitation of the powers of the legislator, the Government and the judiciary. It is therefore important to seek the best possible arrangement to enable the individual to exercise his rights without risk or fear and thus to participate, albeit indirectly, in the exercise of power.

22. Such participation will be ensured by directly or indirectly choosing representatives, by taking the initiative in introducing legislation or appealing against it before the courts, but also by helping to resolve potential problems within society through a general election or referendum.

23. In order to perform their task properly, citizens must be well informed and enlightened as to the purpose of their participation. However, this is the greatest difficulty facing a democratic society which has recourse to the media in order to plan, explain and analyse information for publication, by permitting the confrontation of ideas and opinions, allowing critics to express their views and encouraging transparency. In order to perform this important task - and to avoid manipulation, in a democratic society the media enjoy the requisite independence from financial and political forces and from pressure groups. In order to ensure that this independence is effective, the State may provide financial support for the media, but on the basis of criteria determined by mutual agreement with media representatives, and with due consideration for the principles of equality, utility, specificity and ethics, and also for the need to preserve competition, without which there will be no incentive. Nowadays, however, the existence of Internet and other media threatens to drown the desired clarity under a deluge of information

whose truthfulness has yet to be demonstrated; this is a serious threat to democracy, as information sources are fewer and fewer, paving the way to concentration, monopoly and domination.

24. In such a climate, the State's primary task is to preserve and ensure the survival of the institutions responsible for the social dialogue, for solidarity among citizens and for domestic and external security, in order to safeguard civil harmony and the progress of the nation as a whole. This State activity unquestionably encompasses the country's economic advancement as a means of permitting social and cultural activity to develop, with effects on the population as a whole.

25. Thus, closer relations between citizens require an effort on the part of the State to encourage creative and innovative activity and interchange both among citizens and beyond the borders. To attain this objective, the State provides facilities, eliminates the various obstacles that hinder economic enterprise (small, medium or large-scale) in the various spheres of activity and fosters the integration of individuals within the enterprise, so that they may make use of their skills and participate in the task of production and creation, thereby ensuring not only their survival, but also their own advancement while retaining their freedom.

26. The question nevertheless arises whether the State is capable of assuming responsibility for economic production without jeopardizing democracy. This question can only be answered in the light of the past experience of certain countries and the results achieved. Entrusting the Government with responsibility for producing goods and services undeniably endows it with additional power without any guarantee of efficiency. However, far more serious is the likelihood that this further increase in power will strengthen the position of the administration vis-à-vis the other branches of power, thereby posing a threat to freedom, which is an essential component of democracy. However, it is accepted that the State must perform certain economic activities that are not profitable but necessary for the community or pave the way for profitable activities.

27. Lastly, is it possible to imagine a democracy without ethical or moral principles, alongside laws and regulations, to guide the conduct of individuals within society and towards their fellows? Such a democracy can only be inert and lifeless and consequently will be of no benefit either to

the individual or to the community as a whole. Individuals cannot expect to benefit from all the advantages offered by democracy without fully integrating themselves in society by participating in its preservation, advancement and protection. It is therefore essential to instil in education at all levels a sense of justice and common purpose, and also the idea of service, collective welfare and sacrifice, which are inherent in democracy. If democracy enables the individual to develop within his social environment by exercising his rights without hindrance, society in turn expects that at least the individual will not jeopardize it through the exercise of those rights.

III. MEANS OF PROMOTING A DEMOCRATIC SOCIETY

28. It might seem impossible to promote a democratic society without taking into consideration its fundamental elements, namely the citizen and the various groups, trade unions, clubs and political parties, as it is within these associations that the individual is able effectively to develop his abilities and defend or put forward his views on the affairs of society and its problems. Not only are human groups indispensable for dialogue, a fundamental element in a genuine democracy, but they also provide irreplaceable psychological support for individuals, who find in them sustenance and comfort based on jointly devised projects, affinities or interests.

29. It is recognized that the free consent of citizens lies at the root of all the political and juridical relations linking them with public or private groups, since freedom means the capacity to judge, to decide and to act on one's own, free from any form of constraint or unlawful violence. A democratic society cannot do without the participation of its members, who have the power to decide on the future of its own groups and institutions. Consequently, it integrates them by offering them a wealth of opportunities to act and to express themselves. However, the capacity to integrate is a tangible indicator of a society's flexibility, of its ability to find solutions to its problems with the support of its members. These are characteristics of a democratic society, and also indispensable elements in its advancement and maintenance.

30. However, limits have to be set on this freedom, which is accepted and recognized, failing which it may give rise to disorder and insecurity: hence the need to establish a legitimate public order and public authority,

i.e. constituted with the participation of the majority of citizens. In practice, it is the State, acting through the representatives of the nation, which enacts laws and ensures they are obeyed by means of its courts and police. Citizens can only acquiesce in these checks on their freedom since they have been introduced to protect it within the bounds and framework of society.

31. Thus, the sense of freedom emerges as a decisive and irreplaceable means for individuals to ensure their preservation in a human environment to which they are not necessarily suited. However, this freedom allows individuals to invent, and even develop with others, a social order through which everyone may express himself without fear, and also perhaps productively. This implies a duty not only to respect the rights of others, but also to understand their problems. Thus, by reasonably exercising the freedoms they enjoy by virtue of the law, citizens may effectively participate in the improvement and amendment of the law, and also the furtherance of democracy.

32. That having been said, for individuals to be able to fulfil themselves by using their abilities, freedom must be hedged by certain conditions, the first of which is ownership of property, ownership not only of the means of production, but any property, the fruit of the work of the individual or of his family and the instrument which enables him to act, progress, defend and protect himself, and contribute to expressions of solidarity with other citizens. For this reason, in order to further democracy it is necessary to protect property in order to enable individuals to preserve their own freedom and mobility. A citizen who owns nothing is unable to feel any concern for the affairs of society. He is marginalized, occasionally in revolt but frequently at the mercy of decisions taken without his participation and which he is unable to oppose. This important fact has been taken into consideration by all those who advocate the establishment of the so-called banks for the poor and disadvantaged.

IV. HOW DEMOCRACY CAN ENSURE THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

33. It is commonly stated that there can be no rights without corresponding duties. In addition, any such rights will only have any real substance if their reciprocal relationship with duties exists within a political and social system of relations. Consequently, it is impossible for a right to become

reality unless it is recognized and guaranteed and its violation penalized, in other words, if it exists within a political society governed by the rule of law, and is vested in citizens by laws which it is their duty to obey.

34. If there are economic, social and cultural rights for the benefit and at the disposal of the individual, they must not be merely rhetorical but must take on a substance that necessarily entails duties, but for whom? We know that a family's primary duty is to ensure the subsistence and education of its members, to enable them to take responsibility for their lives in a fully independent and autonomous manner. May the same be said of the State? In the opinion of some, the State, which possesses kingly prerogatives, should assume responsibility for ensuring that citizens are capable of exercising their recognized rights. While an individual may find himself in material need and consequently incapable of properly exercising his rights because he has not received adequate training, a State cannot be in such a situation because it possesses a territory that provides it with the wealth it needs. Thus, the State can and must ensure that from their earliest years citizens receive the minimum means of subsistence to enable them to become responsible adults. In other words, the State has a fundamental duty, on the one hand, to create and maintain the conditions necessary for individuals to exercise their rights and, on the other, to eliminate those obstacles of a non-economic nature that stand in their way. This is the capacity that has made it possible to found States, because their functions are indispensable for individuals to enjoy their rights.

35. Because a democratic society allows citizens to participate in choosing those who govern and in devising the laws governing society, it gives them the power to determine who may and should take on the duties corresponding to the rights granted. Thus, by requiring citizens to participate in public affairs, democracy prepares them directly and indirectly to exercise economic, social and cultural rights. Participation is in fact indispensable in order to trigger economic growth, so that society acquires the means of social progress. Society thus makes it possible to ensure equal conditions for all citizens, which is the ultimate objective of a Government and the basis of any democracy. However, a democracy's worth is judged by the capacity of the individuals making it up not only to participate and to be associated in preparing decisions - directly, or indirectly through their representatives,

but also subsequently to be able to amend them. Participation is linked to the integration of the individual into a circuit of productive activities which form part of an economy more or less open to the outside in order to permit trade and growth, thereby allowing citizens the necessary liberty to exercise their economic, social and cultural rights. However, in a democratic society governed by law, the representative authorities remain under the control of citizens and are consequently required to work for progress and growth in a peaceful environment. All the aforementioned characteristics are important because they do not leave the administration of society without sanction and without responsibility, and because they thus directly involve citizens in exercising their rights.

Annex

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1. United Nations:

(a) General Assembly:

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(b) Commission on Human Rights:

Resolution 1995/60 of 7 March 1995, entitled "Ways and means of overcoming obstacles to the establishment of a democratic society and requirements for the maintenance of democracy";

(c) Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in June 1993 (A/Conf.157/24 (Part I), chap. III);

(d) Reports of the Secretary-General (A/50/332 of 7 August 1995 and A/51/512 of 18 October 1996) entitled "Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies".

2. Specific conferences:

(a) International Conference of Newly Restored Democracies, Manila, 3-6 June 1988, and the Manila Declaration (A/43/538, annex);

(b) Second International Conference of New or Restored Democracies, Managua, 4-6 July 1994, and the Managua Declaration (A/49/713, annex I);

(c) UNESCO International Congress on Education for Human Rights and Democracy, Montreal, 8-11 March 1993.